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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,992	12/19/2001	Duane Girard Uitenbroek	KCC-2122	3688

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EXAMINER

PURVIS, SUE A

ART UNIT PAPER NUMBER

1734

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,992

Applicant(s)

UITENBROEK ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4-6</u> . | 6) <input type="checkbox"/> Other: . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-14, 16, 17, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Odorzynski et al. (US Patent No. 6,245,050 B1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Odorzynski discloses a disposable article with an elasticized area. The elastomeric adhesive is applied with conventional adhesive application systems, such as spray nozzles. (Col. 6, lines 13-20.) As described on page 4, lines 11-14 of applicant’s specification, spraying and extrusion application methods are included in the use of the term ‘printing’. In Odorzynski, the adhesive can be applied in a number of different locations, including being applied to the flexible

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backsheet, then the backsheet is adhered to the topsheet to form an elasticized area which functions as a leg or waist elastic. (Col. 2, lines 27-34; Col. 5, lines 33-67; Col. 6, lines 1-12.) The elastomeric adhesive, because of its properties, averts tensioning against the web being extended.

Regarding claims 2 and 3, Odorzynski discloses applying the adhesive to a waistband area and leg area.

Regarding claims 4, 5, and 8, Odorzynski includes a flexible backsheet (12) made from a polyethylene film or a nonwoven web. (Col. 2, lines 27-58.)

Regarding claim 6, Odorzynski includes a topsheet layer (14). (Col. 2, line 59.)

Regarding claim 7, the precursor web includes a topsheet (12), backsheet (14), and absorbent structure (16) in Odorzynski.

Regarding claims 9 and 18, an option in Odorzynski is to have the elasticized areas formed by applying the elastomeric adhesive to the disposable absorbent article in the form of a film where the film can impart barrier properties to the elasticized area formed therewith. (Col. 6, lines 50-61.)

Regarding claim 10, the elastomeric adhesive in Odorzynski is retractable after elongation because that is an elastic property of the adhesive.

Regarding claim 11, the adhesive used in Odorzynski preferably has a cold flow value of less than 20% at 54 degC. (See Abstract.)

Regarding claim 12, the adhesive used in Odorzynski preferably has a viscosity of less than 70,000 centipoise at 350 degF. (See Abstract.)

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Regarding claim 13, the adhesive used in Odorzynski preferably has an elongation of at least 50% which meets this claim limitation. (See Abstract.)

Regarding claim 14, the adhesive used in Odorzynski has a retroactive force of less than 400 grams force per inch width at 90 percent elongation. (See Abstract.)

Regarding claim 16, the printing in Odorzynski can be done by spraying, extrusion, or the like. (Col. 6, lines 18-20.)

Regarding claim 17, the material used in Odorzynski for the precursor web allows it to flexible in more than one direction, thus the garment is flexible when used.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being obvious over Odorzynski in view of Mack (US Patent No. 4,055,182).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter

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disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Odorzynski does not disclose an adhesive application system which uses a heated roller.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to print the adhesive in Odorzynski with a heated roller, because Odorzynski states that an application system similar to spraying or slot coating can be used and Mack (see col. 3, line 58 through col. 4, lines 1-4) reveals that spraying and printing adhesive onto webs are both well known in the art. Therefore spraying and printing are functionally equivalent alternative expedients. Furthermore, it is within the purview of the artisan to heat the printing roll in Odorzynski, because a heated roll keeps the adhesive in flowable form versus a more solid form.

Conclusion


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blenke et al. (US Patent No. 6,049,023).

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1495.



Sue A. Purvis
Examiner
Art Unit 1734

sp
September 24, 2003